

Court of Appeals, State of Michigan

ORDER

Frank J Locricchio v Stoney Creek Village LLC

Docket No. 281143

LC No. 05-003774 CK

Elizabeth L. Gleicher
Presiding Judge

Henry William Saad

Deborah A. Servitto
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the February 21, 2007, order of the Macomb Circuit Court denying summary disposition to United hereby is REVERSED IN PART insofar as it directed United Lawnscape to indemnify Stoney Creek Village. An indemnity contract is to be strictly construed against the drafter and against the indemnitee. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 172; 530 NW2d 772 (1995). The fundamental rule in the interpretation of contracts is to ascertain the intention of the parties, *Turcheck v Amerifund Financial, Inc*, 272 Mich App 341, 345; 725 NW2d 684 (2006), and the Court cannot conclude on the record before it that the parties intended that United was to indemnify Stoney Creek for its own negligence in failing to repair the broken downspout that resulted in the accumulation of ice, particularly given the factual disputes here, including the deposition testimony from Broder employees. Given the factual disputes, the Court cannot conclude that Stoney Creek is entitled to indemnification from United as a matter of law. The case is REMANDED to the circuit court for further proceedings consistent with this order. This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 27 2008

Date

Sandra Schultz Mengel
Chief Clerk